UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Honorable Marianne O. Battani
In Re: SHOCK ABSORBERS CASES	2:16-cv-03302 2:15-cv-03303
This Document Relates to: All Auto Dealer Actions All End-Payor Actions	**Oral Argument Requested**

DEFENDANTS' COLLECTIVE MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS

PLEASE TAKE NOTICE that, by their counsel listed below, Defendants KYB Corporation, f/k/a Kayaba Industry Co., Ltd., and KYB Americas Corporation (collectively, "Defendants") respectfully move this Court for an Order pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) dismissing all federal and state law claims in the Auto Dealer Plaintiffs' (Case No. 2:16-cv-11256, Doc. 1) and End-Payor Plaintiffs' (Case No. 2:15-cv-14080, Doc. 1) Class Action Complaints ("CACs").

1. This motion raises arguments unique to Plaintiffs' CACs in the Shock Absorbers Cases and is based on the supporting brief, oral argument of counsel, and such other and further material as the Court may consider.

2. As required by Local Rule 7.1(a), counsel for Defendants sought concurrence from counsel for the Auto Dealer and End-Payor plaintiffs on September 7 2016 via telephone conference. During that call, counsel for Defendants explained the nature of this motion and its

legal basis and requested, but did not obtain, concurrence in the relief sought (*i.e.*, dismissal of the CACs).

WHEREFORE, Defendants respectfully requests that this Court issue an Order dismissing all federal and state law claims in the Auto Dealers' and End-Payors' CACs.

Dated: September 9, 2016

Respectfully submitted,

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BRIEF IN SUPPORT OF DEFENDANTS' COLLECTIVE MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS

STATEMENT OF THE ISSUES PRESENTED

1. Whether Plaintiffs have alleged sufficient facts to support their claims that they purchased Shock Absorbers—or purchased or leased vehicles containing Shock Absorbers—manufactured or sold by Defendants or unnamed co-conspirators under *Twombly*.

2. Whether Plaintiffs lack Article III constitutional standing because they fail to sufficiently allege a causal connection between their alleged injury and Defendants' allegedly unlawful conduct.

3. Whether Auto Dealers ("ADPs") lack constitutional standing because they fail to allege that ADPs purchased any Shock Absorbers from Defendants, their co-conspirators, or any other source.

4. Whether ADPs lack constitutional standing to assert claims under the laws of Arizona, District of Columbia, Illinois, Montana, New Hampshire, North Dakota, Rhode Island, South Carolina, and South Dakota, where no ADPs allegedly reside or suffered injury.

5. Whether End Payors ("EPPs") lack constitutional standing to assert claims under the laws of Mississippi, where no EPPs allegedly reside or suffered injury.

6. Whether Plaintiffs lack antitrust standing to bring their state antitrust claims under the laws of Arizona, California, the District of Columbia, Iowa, Kansas, Maine, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

7. Whether Plaintiffs' antitrust claims under the laws of the District of Columbia, Mississippi, New York, North Carolina, South Dakota, Tennessee, West Virginia, and Wisconsin, and consumer protection law claims under the laws of California, Massachusetts, Montana, New York, and North Carolina, must be dismissed because Plaintiffs fail to allege the requisite sufficient nexus with or impact on intrastate commerce.

8. Whether Plaintiffs are barred from recovering under the antitrust laws of Nebraska, New Hampshire, Utah, and Oregon for alleged anticompetitive conduct that occurred before the date that each of those states passed laws that "repeal" *Illinois Brick*.

9. Whether Plaintiffs are barred from maintaining claims as class actions under the consumer protection laws of Montana and South Carolina because the relevant statutes explicitly prohibit such suits.

10. Whether Plaintiffs lack standing to assert consumer protection claims under the laws of Arkansas, New York, and Vermont because their claims are too remote.

11. Whether Plaintiffs are barred from bringing their California, Massachusetts, Montana, New York, and North Carolina consumer protection claims because they fail to allege a sufficient nexus between Defendants' alleged conduct and intrastate commerce.

12. Whether Plaintiffs are barred from bringing their Arkansas and New Mexico consumer protection claims because price-fixing claims cloaked as consumer protection claims are not

actionable in Arkansas and New Mexico and because they fail to allege "unconscionable" conduct.

13. Whether Plaintiffs' consumer protection claims under the laws of Florida and New York must be dismissed because Plaintiffs fail to meet the special pleading requirements of those states' laws.

14. Whether Plaintiffs are barred from recovering under their Massachusetts and Rhode Island consumer protection claims because, as indirect purchasers, Plaintiffs lack standing and, for Rhode Island, because price-fixing claims cloaked as consumer protection claims are not actionable.

15. Whether ADPs are barred from bringing their District of Columbia, Missouri, Montana, and Vermont consumer protection claims because their alleged purchases of shock absorbers were for resale.

16. Whether Plaintiffs can bring unjust enrichment claims under the laws of thirty-one states and the District of Columbia if there are no surviving antitrust or consumer protection claims under the laws of those states.

17. Whether Plaintiffs' claims for unjust enrichment under the laws of Florida, Kansas, Maine, Michigan, Minnesota, North Carolina, North Dakota, South Carolina, and Utah must be dismissed because Plaintiffs fail to plead that they conferred a direct benefit on defendants.

18. Whether Plaintiffs are barred from maintaining unjust enrichment claims in nineteen states (Arizona, Arkansas, California, Florida, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, and South Carolina) and the District of Columbia because Plaintiffs received the benefit of their bargains.

19. Whether Plaintiffs' claims for unjust enrichment under the laws of Kansas, Missouri, Nevada, New Hampshire, South Dakota, Tennessee, Vermont, and Wisconsin must be dismissed because Defendants provided consideration for the benefit they received.

20. Whether Plaintiffs' claim for unjust enrichment under California law must be dismissed because California does not recognize a cause of action for unjust enrichment.

21. Whether Plaintiffs' unjust enrichment claims under the laws of Arizona, Hawaii, Illinois, Iowa, Massachusetts, Minnesota, Mississippi, Nevada, New York, South Carolina, Tennessee, Utah, and West Virginia must be dismissed because Plaintiffs fail to meet the special pleading requirements of those states' laws.

22. Whether Plaintiffs' antitrust, consumer protection, and unjust enrichment claims are barred, in whole or in part, by each state's statute of limitations.

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INTRODUCTION

The Auto-Dealer Plaintiffs' ("ADPs") and End-Payor Plaintiffs' ("EPPs") (collectively "Plaintiffs") complaints against Defendants KYB Corporation, f/k/a Kayaba Industry Co., Ltd., and KYB Americas Corporation (collectively, "Defendants") fall far short of the requirements for pleading antitrust claims under federal or state antitrust laws. Plaintiffs seek to represent two separate classes of indirect purchasers who allegedly purchased or leased certain vehicles. *See* ADPs' Class Action Complaint (Case No. 2:16-cv-11256, Dkt. No. 1) ("ADP Compl.") ¶¶ 126-127; EPPs' Class Action Complaint (Case No. 2:15-cv-14080, Dkt. No. 1) ("EPP Compl.") ¶¶ 143-144.[1] However, there are no factual allegations in either complaint to suggest that ADPs or EPPs purchased or leased vehicles that contained shock absorbers manufactured by Defendants or any alleged, unnamed co-conspirators—a necessary element of their federal and state law claims—much less factual allegations sufficient to show that they were impacted by the alleged conspiracy as required to have constitutional standing. Many ADPs allege, to the contrary, that they were *not* authorized dealers for the Original Equipment Manufacturers ("OEMs") to whom Defendants sold shock absorbers. ADP Compl. ¶¶ 19-56. The EPP Complaint does not even allege what vehicles EPPs purchased, and many would be unable to plead the necessary facts under *Twombly* to make out a valid claim. With Plaintiffs' depositions now largely complete, Plaintiffs cannot hide behind vague and conclusory allegations where they know they did not purchase a vehicle manufactured by OEMs that purchased shock absorbers from Defendants.

Because many of the named plaintiffs did not purchase a vehicle from an allegedly impacted OEM, Plaintiffs lack standing to assert state law claims in additional states not

[1] By way of February 3, 2015 letter, ADPs have stated that they will not pursue claims for replacement parts in any of the cases in 12-md-2311. EPPs have not brought any such claims in this case. Accordingly, Defendants' motion does not address claims for replacement parts.

addressed in prior motions to dismiss in other MDL cases. Plaintiffs' state law claims also fail for numerous state-specific reasons, including a new issue under Illinois state law also not addressed in prior MDL cases. In many instances, Plaintiffs fail to allege even the basic facts necessary to give rise to their state claims.

Further, Plaintiffs bring claims that this Court has dismissed in other parts cases within *In re Automotive Parts Antitrust Litigation*. In those cases, this Court dismissed California unjust enrichment claims because no such claim exists. This Court also limited New Hampshire and Utah antitrust claims because indirect purchaser suits were barred in those states for some or all of the class period. This Court dismissed South Carolina consumer protection claims because such claims cannot be brought as class actions. And the Court dismissed ADPs' District of Columbia, Massachusetts, Missouri, Montana, and Vermont consumer protection claims because ADPs are not consumers under those statutes. Yet all these claims appear in one or both of the ADP and EPP complaints here. These claims, as well as Plaintiffs' other state law claims, should be dismissed as set forth below.

ARGUMENT

I. PLAINTIFFS DO NOT ALLEGE SUFFICIENT FACTS TO SUPPORT THEIR CONCLUSORY CLAIM THAT THEY INDIRECTLY PURCHASED SHOCK ABSORBERS FROM DEFENDANTS OR UNNAMED CO-CONSPIRATORS

To survive a motion to dismiss, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Conclusory allegations need not be accepted as true and should be disregarded for purposes of a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (requiring a court to disregard allegations "that, because they are no more than conclusions, are not entitled to the assumption of truth"); *Twombly*, 550 U.S. at 555–57. Rather, the "complaint must contain either direct or inferential allegations respecting all material elements to sustain a recovery under some viable legal theory. Conclusory allegations or legal conclusions masquerading as factual allegations will not suffice." *Mauldin v. Napolitano*, Civil No. 10–12826, 2011 WL 3113104, at *2 (E.D. Mich. July 26, 2011) (Battani, J.) (quoting *Bishop v. Lucent Technologies, Inc.*, 520 F.3d 516, 519 (6th Cir. 2008)).

In an obvious pleading deficiency, ADPs do not allege that they purchased *any* shock absorbers, claiming only to have purchased "Vehicles containing Automotive Parts…." ADP Compl. ¶¶ 19-56*[2]. Moreover, ADPs allege no specific facts to support the conclusion that the unspecified "Automotive Parts" were "manufactured by Defendants and/or their co-conspirators…." *Id.* ADPs allege that Defendants conspired with respect to "Shock Absorbers sold to Fuji Heavy Industries Ltd. (manufacturer of Subaru vehicles), Honda Motor Co., Ltd., Kawasaki Heavy Industries, Ltd., Nissan Motor Company Ltd., Suzuki Motor Corporation, and Toyota Motor Company…." *Id.* at ¶ 81. However, the ADP Complaint does not allege that ADPs purchased vehicles manufactured by the identified OEMs—much less that they purchased vehicles manufactured by those OEMs *that contained shock absorbers manufactured or sold by Defendants or alleged co-conspirators*. In fact, at least 14 of the ADPs do not even allege they were authorized dealers for any of the identified OEMs during the alleged class period. *Id.* at ¶¶ 19-56*.[3] Instead, those ADPs allege that they were only authorized dealers for "Chevrolet" (Rainbow) or "Buick, Cadillac, Chevrolet, GMC, Pontiac, Chrysler, Jeep, Dodge, RAM, Kia, Mazda, and Volkswagen" (McGrath). *Id.* Accordingly, the Court should dismiss the ADPs' claims, or at the very least, dismiss the claims of the ADPs that were not authorized dealers for

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[2] A formatting error in the ADP Complaint included a second paragraph numbered "1" after paragraph 56. To avoid confusion, we refer to this paragraph as 56* throughout.

[3] At least Rainbow, McGrath, Green Team, Patsy Lou, Superstore, Hammett, Table Rock, Don Weir, Pitre, Westfield, John Greene, Salt Lake Valley, Ramey, and Thornhill were not authorized dealers for Subaru, Honda, Kawasaki, Nissan, Suzuki, or Toyota. ADP Compl. ¶¶ 19-56.

Subaru, Honda, Kawasaki, Nissan, Suzuki, or Toyota. *See, e.g., In re Magnesium Oxide Antitrust Litig.*, Civ. No. 10–5943, 2011 WL 5008090 (D.N.J. Oct. 20, 2011) ("without knowing which specific products IP Plaintiffs purchased, it is impossible to determine whether an increase in their price is the type of injury that furthers the object of the alleged conspiracy").

Like ADPs, EPPs allege that Defendants conspired with respect to "Shock Absorbers sold to Fuji Heavy Industries Ltd. (manufacturer of Subaru vehicles), Honda Motor Co., Ltd., Kawasaki Heavy Industries, Ltd., Nissan Motor Company Ltd., Suzuki Motor Corporation, and Toyota Motor Company…." EPP Compl. ¶ 98. However, not a single EPP alleges that it purchased a vehicle manufactured by one of those OEMs; instead, each EPP pleads the conclusory claim that they "purchased at least one Shock Absorber indirectly from at least one Defendant." *Id.* at ¶¶ 19-73. As set forth above, the Court should disregard such unsupported allegations "that, because they are no more than conclusions, are not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679; *Mauldin*, 2011 WL 3113104, at *2. In fact, the necessary pleading of specific factual allegations—*e.g*, what vehicle each EPP purchased—should show that many EPPs *did not* purchase vehicles containing shock absorbers manufactured or sold by Defendants.[4] While EPPs' discovery responses confirming they did not purchase vehicles manufactured by OEMs to whom Defendants sold shock absorbers is not properly considered on a motion to dismiss, the fact that EPPs have already confirmed that is the case underscores EPPs' lack of any justification to hide behind the vague and conclusory allegations in their complaint. Regardless, without factual allegations of what product they purchased to test and support their

[4] In consolidated discovery in 12-md-2311, applicable in these cases, many EPPs already confirmed they did not purchase vehicles manufactured by OEMs to whom Defendants sold shock absorbers.

conclusory claims, EPPs claims should be dismissed. *See, e.g.*, *Magnesium Oxide*, 2011 WL 5008090; *Twombly*, 550 U.S. at 555–57.

II. THE COURT SHOULD DISMISS PLAINTIFFS' CLAIMS FOR LACK OF CONSTITUTIONAL STANDING

The Court should dismiss ADPs' and EPPs' claims because Plaintiffs do not have Article III constitutional standing. As in the other auto parts cases in which the defendants moved to dismiss for lack of constitutional standing, Plaintiffs do not sufficiently allege a causal connection between their alleged injury and Defendants' alleged unlawful conduct.[5]

Here, Plaintiffs' allegations are deficient above and beyond any the Court has analyzed previously in this litigation. Although the Court has previously declined to dismiss other parts cases on constitutional standing grounds where the Court found the complaint "allege[s] a physical chain of distribution from Defendants to Plaintiffs and that the costs are traceable," *Bearings*, 12-cv-502, Doc. 104, at 16, the ADP and EPP complaints here wholly and indisputably fail in this regard. ADPs do not allege the purchase of *any* Shock Absorbers, from anyone, at any time. ADP Compl. ¶¶ 19-56*. Many ADPs allege that they were not even authorized dealers for the OEMs that might have purchased shock absorbers from Defendants. *Id.* And ADPs do not allege that the vehicles they purchased contained shock absorbers manufactured by Defendants or impacted by the alleged conspiracy. Because ADPs do not allege that they purchased shock absorbers manufactured by Defendants or even targeted by the alleged conspiracy, under the standard the Court has previously enunciated, all their claims must be dismissed. *See, e.g., Bearings*, 12-cv-502, Doc. 104, at 14-15; *Sierra Club v. Morton*, 405 U.S. 725, 734-35 (1972) (dismissing complaint because, although it alleged defendants caused an injury, "the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured."); *Magnesium Oxide*, 2011 WL 5008090 ("without knowing which specific products IP Plaintiffs purchased, it is impossible to determine whether an increase in their price is the type of injury that furthers the object of the alleged conspiracy").

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[5] Defendants incorporate by reference herein, but will not repeat, the arguments contained in the previous motions to dismiss regarding Plaintiffs' lack of constitutional standing. *See Wiper Systems*, 2:13-cv-00902, Doc. 51 at 2; *AVRP*, 2:13-cv-00802, Doc. 57 at 2-3; *Bearings*, 2:12-cv-00502, Doc. 82 at 9-12; *Fuel Senders*, 2:12-cv-00302, Doc. 89 at 7-18; *HCP*, 12-cv-00402, Doc. 97 at 8-15; *IPC*, 2:12-cv-00202, Doc. 43 at 5-10; *OSS*, 2:12-cv-00602, Doc. 60 at 6-10; *WH*, 2:12-md-02311, Doc. 230 at 5-11 (collectively, "Previous Motions to Dismiss"). *See also Wiper Systems*, 2:13-cv-00902, Doc. 69 at 1-2; *AVRP*, 2:13-cv-00802, Doc. 69 at 2-3; *Bearings*, 2:12-cv-00502, Doc. 92 at 5-7; *Fuel Senders*, 2:12-cv-00302, Doc. 97 at 3-7; *HCP*, 12-cv-00402, Doc. 114 at 5-9; *IPC*, 2:12-cv-00202, Doc. 63 at 1-7; *OSS*, 2:12-cv-00602, Doc. 67 at 2-4; *WH*, 2:12-cv-00103, Doc. 89 at 3-6 (collectively, "Previous Reply Briefs").

Read properly under *Twombly* and its progeny, as discussed above, EPPs allege even less of a "physical chain of distribution from Defendants to Plaintiffs" than ADPs. *Bearings*, 12-cv-502, Doc. 104, at 16. EPPs conclusory allegations that they "purchased at least one Shock Absorber indirectly from at least one Defendant" must be disregarded for the purposes of a motion to dismiss "because they are no more than conclusions [and] not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679; *Mauldin*, 2011 WL 3113104, at *2. EPPs know what vehicles they purchased—and, now, so do Defendants—and the specific factual pleading *Twombly* requires would lay bare EPPs' lack of plausible factual allegations to support their conclusory claims. Many EPPs did not purchase a vehicle that was manufactured by an OEM to whom Defendants sold shock absorbers, so it is not possible that they indirectly purchased shock absorbers from Defendants. Therefore, EPPs' claims should also be dismissed. *See, e.g., Bearings*, 12-cv-502, Doc. 104, at 14-15; *Sierra Club*, 405 U.S. at 734-35; *Magnesium Oxide*, 2011 WL 5008090.

Plaintiffs also do not have standing to assert claims under the laws of states in which no named plaintiff resides or where only a named plaintiff that purchased vehicles manufactured by

OEMs that did not purchase shock absorbers from Defendants resides. For ADPs these states are at least: Arizona, District of Columbia, Illinois, Kansas, Minnesota, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, and West Virginia. In their complaint, EPPs have not identified *any* named plaintiffs, residing in any state, that purchased a vehicle manufactured by an OEM to whom Defendants sold shock absorbers. Thus, the Court should dismiss Plaintiffs' claims based on this additional deficiency, which strips them of the required constitutional standing. *See* Previous Motions to Dismiss.

III. THE COURT SHOULD DISMISS PLAINTIFFS' STATE LAW CLAIMS ON STATUTORY OR OTHER GROUNDS

Plaintiffs' state antitrust, consumer protection, and unjust enrichment claims are deficient for numerous state-specific reasons. This section addresses new authority for dismissing Plaintiffs' claims under the laws of the District of Columbia and Vermont, and a new pleading deficiency under the laws of Illinois not addressed in the Court's rulings on motions to dismiss in other consolidated cases. As the Court has requested in Prior Auto Parts Cases, Defendants will address those reasons state by state.

A. **Arizona** (No New Authority)[6]

The Court should dismiss Plaintiffs' Arizona claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Arizona antitrust claims because Plaintiffs do not have antitrust standing under *Associated General Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983) ("*AGC*") or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Arizona unjust enrichment claims because Plaintiffs fail to plead the absence

[6] Per the Court's September 2, 2014, Order on Briefing, Defendants identify any Previously Uncited Authority at the beginning of each state-specific sub-section.

of a legal remedy and because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Arizona's statute of limitations bars Plaintiffs' Arizona antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Arizona is four years, and the same limitation applies to unjust enrichment claims that are based on the same allegations. Ariz. Rev. Stat. Ann. § 44-1410; *Stuart & Sons, L.P. v. Curtis Publ'g Co.*, 456 F. Supp. 2d 336, 343 (D. Conn. 2006) (to prevent opportunistic pleading, where a plaintiff asserts an equitable claim based on the same conduct used to support a statutory claim, both claims are controlled by the statute of limitations applicable to the statutory claim).

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations based on fraudulent concealment, Arizona requires that Plaintiffs allege with particularity positive acts of concealment that misled them. *Tovrea Land & Cattle Co. v. Linsenmeyer*, 412 P.2d 47, 63 (Ariz. 1966); *Porter v. Spader*, 239 P.3d 743, 747 (Ariz. Ct. App. 2010). They do not do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.[7]

B. Arkansas (No New Authority)

The Court should dismiss Plaintiffs' Arkansas claims.

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[7] EPPs originally filed on June 6, 2013 (Case No. 2:13-cv-12483, Doc. 1); ADPs originally filed on July 9, 2013 (Case No. 2:13-cv-12964, Doc. 1). Through not asserting the argument at this time, Defendants reserve the right to argue that Plaintiffs' amended complaints do not relate back to their original complaints for statute of limitation purposes.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Arkansas consumer protection claims because (i) Plaintiffs fail to allege "unconscionable" conduct, (ii) price-fixing claims cloaked as consumer protection claims are not actionable in Arkansas, and (iii) Plaintiffs are too remote to have standing. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Arkansas unjust enrichment claims because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Arkansas' statute of limitations bars Plaintiffs' Arkansas consumer protection and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for consumer protection claims in Arkansas is five years, and this limitation applies to unjust enrichment claims that are based on the same allegations. Ark. Code Ann. § 4-88-115; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations based on fraudulent concealment, Arkansas requires that Plaintiffs plead with particularity a positive act of fraud that is actively concealed and is not discoverable by reasonable diligence. *Bomar v. Moser*, 251 S.W.3d 234, 241-42 (Ark. 2007). Plaintiffs do not do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to five years before Plaintiffs filed their original complaints.

C. **California** (No New Authority)

The Court should dismiss Plaintiffs' California claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' California antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, the Court should dismiss Plaintiffs' California consumer protection claims because, for the reasons explained in the Previous Motions to Dismiss, Plaintiffs fail to allege a sufficient nexus to California. *See* Previous Motions to Dismiss.

Third, the Court should dismiss Plaintiffs' California unjust enrichment claims because, as the Court previously recognized, the cause of action *does not exist* under California law. The Court dismissed plaintiffs' California unjust enrichment claims in those cases for that reason, and it should do so here as well. *See Wiper Systems*, 2:13-cv-00902, Doc. 74; *AVRP*, 2:13-cv-00802, Doc. 74; *Bearings*, 2:12-cv-00502, Doc. 104; *OSS*, 2:12-cv-00602, Doc. 75; *Fuel Senders*, 2:12-cv-00302, Doc. 104; *IPC*, 2:12-cv-00202, Doc. 82; *HCP*, 12-cv-00402, Doc. 130; *see also Melchior v. New Line Prods. Inc.*, 106 Cal. App. 4th 779, 793 (2003) ("Unjust enrichment is a general principle, underlying various legal doctrines and remedies, rather than a remedy itself" (internal quotations and citation omitted)); *Walker v. USAA Cas. Ins. Co.*, 474 F. Supp. 2d 1168, 1174 (E.D. Cal. 2007) ("Because California law does not recognize [p]laintiff's claim for unjust enrichment, there are no facts [p]laintiff could prove to support this claim."), *aff'd sub nom. Walker v. Geico Gen. Ins. Co.*, 558 F.3d 1025 (9th Cir. 2009).

Alternatively, the Court should dismiss Plaintiffs' California unjust enrichment claims because, as the defendants in the Prior Auto Parts Cases explained in their motions to dismiss, the Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss. However, if the Court dismisses this claim on the same grounds as it did previously, it need not consider this alternative basis for dismissal.

Fourth, California's statute of limitations bars Plaintiffs' California antitrust, consumer protection, and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust and consumer protection claims in California is four years, and the same limitation applies to unjust enrichment claims that rely on the same allegations. Cal. Bus. & Prof. Code §§ 16750.1, 17208; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations based on fraudulent concealment, California requires that Plaintiffs plead with particularity both affirmative acts and due diligence, *Hesse v. Vinatieri*, Cal. App. 2d 448, 451-52 (1956), *Snapp & Associates Insurance Services, Inc. v. Robertson*, 96 Cal. App. 4th 884, 890-91 (2002), and that the affirmative acts caused the failure to have notice of the alleged claims. *Lauter v. Anoufrieva*, 642 F. Supp. 2d 1060, 1100 (C.D. Cal. 2008). Plaintiffs do not satisfy any of these requirements. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

D. District of Columbia (New Authority)

The Court should dismiss Plaintiffs' District of Columbia claims.

First, the Court should dismiss ADP's District of Columbia consumer protection claim because, as this court has previously recognized, "the District of Columbia consumer protection statute is not for the protection of 'merchants in their commercial dealings with suppliers or other merchants.'" *HCP*, 12-cv-00402, Doc. 130 at 44 (quoting *Ford v. ChartOne, Inc.*, 908 A.2d 72, 83-84 (D.C. 2006)); *see also Fuel Senders*, 2:12-cv-00302, Doc. 104; *IPC*, 2:12-cv-00202, Doc. 82. The District of Columbia Court of Appeals recently affirmed this interpretation when it upheld the dismissal of a claim under the District of Columbia statute because the plaintiff was "'regularly engaged in the business of buying the goods or service in question for later resale to another in the distribution chain, or at retail to the general public.'" *See Price v. Independence Fed. Sav. Bank*, 110 A.3d 567, 574 (D.C. 2015) (quoting *Adam A. Weschler & Son, Inc. v. Klank*, 561 A.2d 1003, 1005 (D.C. 1989)). ADP's even agreed to dismissal of their District of Columbia consumer protection claims in two cases. *See Bearings*, 2:12-cv-00502, Doc. 104; *OSS*, 2:12-cv-00602, Doc. 75. The Court should similarly dismiss ADP's District of Columbia consumer protection claim here.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' District of Columbia antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard, and because Plaintiffs do not allege sufficient impact on intrastate commerce. *See* Previous Motions to Dismiss.

Third, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' District of Columbia unjust enrichment claims because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Fourth, the statute of limitations in the District of Columbia bars Plaintiffs' District of Columbia antitrust, consumer protection, and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for consumer protection and antitrust claims in the District of Columbia is three and four years, respectively, and these limitations apply equally to unjust enrichment claims asserted based on the same allegations. D.C. Code §§ 12-301(8), 28-4511; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations based on fraudulent concealment, the District of

Columbia requires that Plaintiffs plead with particularity affirmative acts or due diligence. *Cevenini v. Archbishop of Wash.*, 707 A.2d 768, 773–74 (D.C. 1998). Plaintiffs do not do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' consumer protection and unjust enrichment claims for damages based on purchases prior to three years before Plaintiffs filed their original complaints, and Plaintiffs' antitrust claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

E. Florida (No New Authority)

The Court should dismiss Plaintiffs' Florida claims.

First, Plaintiffs' Florida consumer protection claims fail because Plaintiffs do not allege that Defendants engaged in any conduct in Florida. Florida's consumer protection law applies only to unfair or deceptive conduct that occurred within the state of Florida. *See Wiper Systems*, 2:13-cv-00902, Doc. 51 at 7-8; *AVRP*, 2:13-cv-00802, Doc. 57 at 8-9. Plaintiffs do not allege any specific conduct by any Defendant within Florida. The Court should dismiss Plaintiffs' Florida consumer protection claims for that reason alone.

Alternatively, the Court should dismiss Plaintiffs' Florida consumer protection claims because, as explained in the Previous Motions to Dismiss, Plaintiffs fail to plead fraud or deceit with the required particularity. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Florida unjust enrichment claims because Plaintiffs do not plead that they conferred a direct benefit on Defendants and because ADPs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Florida's statute of limitations bars Plaintiffs' Florida consumer protection and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust and consumer protection claims in Florida is four years, and the same limitation applies to unjust enrichment claims that are based on the same allegations. Fla. Stat. Ann. § 95.11(3); *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Florida requires that Plaintiffs plead with particularity both affirmative acts and due diligence. *First Fed. Sav. & Loan Ass'n v. Dade Fed. Sav. & Loan Ass'n*, 403 So.2d 1097, 1100 (Fla. Dist. Ct. App. 1981); *Delco Oil, Inc. v. Pannu*, 856 So. 2d 1070, 1073 (Fla. Dist. Ct. App. 2003); *Fox v. City of Pompano Beach*, 984 So. 2d 664, 668 (Fla. Dist. Ct. App. 2008). Plaintiffs have not done either. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

F. Hawaii (No New Authority)

The Court should dismiss Plaintiffs' Hawaii claims.

First, the Court should dismiss Plaintiffs' Hawaii unjust enrichment claim because, as explained in the Previous Motions to Dismiss, Hawaii does not permit unjust enrichment claims where, as here, a statutory claim is available. *See* Previous Motions to Dismiss.

Second, Hawaii's statute of limitations bars Plaintiffs' Hawaii consumer protection and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust, consumer protection, and unjust enrichment claims in Hawaii is four years. Haw. Rev. Stat. § 480-24; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Hawaii requires that Plaintiffs plead affirmative acts with particularity. *Rundgren v. Bank of N.Y. Mellon*, 777 F.

Supp. 2d 1224, 1230 (D. Haw. 2011); *Au v. Au*, 626 P.2d 173, 178 (Haw. 1981). Plaintiffs have not done so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

G. Illinois (New Pleading Deficiency)

The Court should declare that ADPs have not stated a claim under Illinois law, or in the alternative, dismiss ADPs' Illinois claims.

First, although ADPs indicate initially that they are bringing an unjust enrichment claim under Illinois law, ADP CAC ¶ 126, in the actual claim for relief, ADPs only pursue unjust enrichment claims "under the laws of the states listed in the Second and Third claims," *id.* ¶ 224. Because Illinois is not listed in the Second and Third claims, this Court should declare that ADPs have not stated any claim under Illinois law.

Second, for the reasons explained in the Previous Motions to Dismiss, if a claim was stated, the Court should dismiss ADPs' Illinois unjust enrichment claim because ADPs do not allege a duty owed to them by Defendants and because ADPs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, if a claim was stated, Illinois' statute of limitations bars ADPs' Illinois unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Illinois is four years, and the limitation applies equally to unjust enrichment claims that are based on the same allegations. 740 Ill. Comp. Stat. 10/7(2); *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. *See* ADP Compl. ¶¶ 235-45. To toll the statute of limitations for fraudulent concealment, Illinois requires that ADPs plead with particularity affirmative acts upon which ADPs detrimentally relied, *Bank of Ravenswood v. Domino's Pizza, Inc.*, 646 N.E.2d 1252, 1261 (Ill. App. Ct. 1995); *Orlak v. Loyola University Health System*, 885 N.E.2d 999, 1009 (Ill. 2007), or due diligence by ADPs. *People v. Coleman*, 794 N.E.2d 275, 293 (Ill. 2002); *In re Ford Motor Co. E-350 Van Prods. Liab. Litig. (No. II)*, No. 03-4558, 2010 WL 2813788, at *22 (D.N.J. July 9, 2010). ADPs do not plead either. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

H. Iowa (No New Authority)

The Court should dismiss Plaintiffs' Iowa claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Iowa antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, the Court should dismiss Plaintiffs' Iowa unjust enrichment claim because, as explained in the Previous Motions to Dismiss, Plaintiffs fail to allege a direct relationship between themselves and Defendants. *See* Previous Motions to Dismiss.

Alternatively, the Court should dismiss Plaintiffs' Iowa unjust enrichment claim because, as explained in the Previous Motions to Dismiss, Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Iowa's statute of limitations bars Plaintiffs' Iowa antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Iowa is four years, and the same limitation applies to unjust enrichment claims that are based on the same allegations. Iowa Code § 553.16(1); *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Iowa requires that Plaintiffs plead with particularity affirmative concealment, due diligence, and detrimental reliance. *Christy v. Miulli*, 692 N.W.2d 694, 702 (Iowa 2005); *Baier v. Ford Motor Co.*, No. C04-2039, 2005 WL 928615, at *4-5 (N.D. Iowa Apr. 21, 2005). Plaintiffs do not plead any of these requirements. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

I. **Kansas** (No New Authority)

The Court should dismiss Plaintiffs' Kansas claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Kansas antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Kansas unjust enrichment claim because Plaintiffs fail to plead they conferred a direct benefit on Defendants and because Plaintiffs received consideration for the benefit conferred. *See* Previous Motions to Dismiss.

Third, Kansas' statute of limitations bars Plaintiffs' Kansas antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Kansas is three years, and the limitation applies equally to unjust enrichment claims that rely on the same allegations. Kan. Stat. Ann. § 60-512(2); *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Kansas requires that Plaintiffs plead with particularity affirmative concealment, due diligence, and detrimental reliance. *Friends Univ. v. W.R. Grace & Co.*, 608 P.2d 936, 941 (Kan. 1980); *Doe v. St. Benedict's Abbey*, 189 P.3d 580 (Kan. Ct. App. Aug. 8, 2008). Plaintiffs have not plead any of these allegations. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to three years before Plaintiffs filed their original complaints.

J. Maine (No New Authority)

The Court should dismiss Plaintiffs' Maine claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Maine antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Maine unjust enrichment claim because Plaintiffs fail to allege they conferred a direct benefit on Defendants. *See* Previous Motions to Dismiss.

Third, Maine's statute of limitations bars Plaintiffs' Maine antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Maine is six years, and the limitation applies equally to unjust enrichment claims based on the same allegations. 14 Me. Rev. Stat. § 752; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl.

¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Maine requires that Plaintiffs plead with particularity affirmative concealment, detrimental reliance, and due diligence. *McKinnon v. Honeywell Int'l, Inc.*, 977 A.2d 420, 426 (Me. 2009); *Harkness v. Fitzgerald*, 701 A.2d 370, 372 (Me. 1997); *Kobritz v. Severance*, 912 A.2d 1237, 1241 (Me. 2007). Plaintiffs have not done so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to six years before Plaintiffs filed their original complaints.

K. Massachusetts (No New Authority)

The Court should dismiss Plaintiffs' Massachusetts claims.

First, ADPs' Massachusetts consumer protection claim must be dismissed because, as this Court previously recognize, Massachusetts has a "bar prohibiting an indirect purchaser business plaintiff from proceeding" with this type of claim. *WH*, 2:12-cv-102, Doc. 99 at55 (citing *Ciardi v. F. Hoffmann-LaRoche, Ltd.*, 762 N.E.2d 303, 309 (Mass. 2002)). ADPs are indirect purchaser business plaintiffs, and the Court should similarly dismiss ADPs' Massachusetts consumers protection claim.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Massachusetts consumer protection claim because Plaintiffs fail to allege a sufficient nexus to Massachusetts. *See also Wiper Systems*, 2:13-cv-00902, Doc. 51 at 15-16; *AVRP*, 2:13-cv-00802, Doc. 57 at 16. Because Plaintiffs' conclusory allegations, *see* EPP Compl. ¶ 234(c), do not tie Plaintiffs' injuries to the alleged conspiracy's effect on trade and commerce in Massachusetts, Plaintiffs' consumer protection claims must be dismissed.

Alternatively, the Court should dismiss Plaintiffs' Massachusetts consumer protection claim because, as explained in the Previous Motions to Dismiss, Plaintiffs lack standing. *See* Previous Motions to Dismiss.

Third, the Court should dismiss Plaintiffs' Massachusetts unjust enrichment claims because, as explained in the Previous Motions to Dismiss, Massachusetts does not permit unjust enrichment claims where, as here, a statutory claim is available. *See* Previous Motions to Dismiss.

Alternatively, the Court should dismiss Plaintiffs' Massachusetts unjust enrichment claim because, as explained in the Previous Motions to Dismiss, Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Fourth, Massachusetts' statute of limitations bars Plaintiffs' Massachusetts consumer protection claim and Plaintiffs' Massachusetts unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60, Doc. 60. The statute of limitations for antitrust claims in Massachusetts is four years, and the limitation applies equally to unjust enrichment claims based on the same allegations. Mass. Gen. Laws ch. 93, § 13; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Massachusetts requires that Plaintiffs plead with particularity "affirmative act[s] done with intent to deceive," *Stark v. Advanced Magnetics, Inc.*, 736 N.E.2d 434, 442 (Mass. App. Ct. 2000) (quotation and citation omitted), and the "exercise of reasonable diligence." *Frank Cooke, Inc. v. Hurwitz*, 406 N.E.2d 678, 683 (Mass. App. Ct. 1980); *Puritan Med. Ctr., Inc. v. Cashman*, 596 N.E.2d 1004, 1010 (Mass. 1992). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

L. **Michigan** (No New Authority)

The Court should dismiss Plaintiffs' Michigan claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Michigan antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Michigan unjust enrichment claim because Plaintiffs fail to allege that they conferred a direct benefit on Defendants and because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Michigan's statute of limitations bars Plaintiffs' Michigan antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Michigan is four years, and the limitation applies equally to unjust enrichment claims based on the same allegations. Mich. Comp. Laws § 445.781; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Michigan requires that Plaintiffs plead with particularity "affirmative acts or misrepresentations that were designed to prevent subsequent discovery," *Sills v. Oakland General Hospital*, 559 N.W.2d 348, 352 (Mich. Ct. App. 1996), and "due diligence until discovery of the facts." *Chandler v. Wackenhut Corp.*, No. 1:08-CV-1197, 2010 WL 307908, at *4-5 (W.D. Mich. Jan. 19, 2010) (quotation and citation omitted), *aff'd*, 465 F. App'x 425 (6th Cir. 2012). Plaintiffs do not allege either. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

M. Minnesota (No New Authority)

The Court should dismiss Plaintiffs' Minnesota claims.

First, the Court should dismiss Plaintiffs' Minnesota unjust enrichment claim because, as explained in the Previous Motions to Dismiss, Minnesota does not allow a remedy in equity where, as here, there is an adequate remedy at law. *See* Previous Motions to Dismiss. Plaintiffs claim legal remedies under the antitrust and consumer protection laws of dozens of states, and thus cannot claim the absence of a legal remedy. *Id.* Plaintiffs' Minnesota unjust enrichment claim also fails because Plaintiffs do not plead that they conferred a direct benefit on Defendants. *Id*.

Alternatively, the Court should dismiss Plaintiffs' Minnesota unjust enrichment claim because, as the defendants explained in their motions to dismiss in the Prior Auto Parts Cases, Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Second, Minnesota's statute of limitations bars Plaintiffs' Minnesota antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Minnesota is four years, and the same limitation applies to unjust enrichment claims that rely on the same allegations. Minn. Stat. § 325D.64; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Minnesota requires that Plaintiffs plead with particularity an "affirmative act designed to and which does prevent the discovery of the cause of action," *State Farm Mutual Automobile Insurance Co. v. Ford Motor Co.*, 572 N.W.2d 321, 325 (Minn. Ct. App. 1997), as well as due diligence and reliance. *Hanna Mining Co. v. InterNorth, Inc.*, 379 N.W.2d 663, 667 (Minn. Ct. App. 1986); *Appletree Square 1*

Ltd. P'ship v. W.R. Grace & Co., 815 F. Supp. 1266, 1275 (D. Minn. 1993) *aff'd*, 29 F.3d 1283 (8th Cir. 1994). Plaintiffs do not allege either. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

N. Mississippi (No New Authority)

The Court should dismiss Plaintiffs' Mississippi claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Mississippi antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard, and because Plaintiffs do not allege sufficient impact on intrastate commerce. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Mississippi unjust enrichment claims because Plaintiffs fail to allege that they mistakenly paid Defendants, and because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Mississippi's statute of limitations bars Plaintiffs' Mississippi antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Mississippi is three years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. Miss. Code Ann. § 15-1-49; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Mississippi requires that Plaintiffs plead with particularity "some affirmative act or conduct . . . [that] prevented discovery of the claim," and "due diligence . . . performed [by the plaintiffs]." *Stephens v. Equitable Life*

Assurance Soc'y of the U.S., 850 So. 2d 78, 84 (Miss. 2003). *See also Spann v. Diaz*, 987 So. 2d 443, 449 (Miss. 2008). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to three years before Plaintiffs filed their original complaints.

O. Missouri (No New Authority)

The Court should dismiss Plaintiffs' Missouri claims.

First, ADPs' Missouri consumer protection claim should be dismissed because ADPs are businesses that resold vehicles and did not "purchase[] or lease[] merchandise primarily for personal, family, or household purposes," and are therefore not entitled to relief under Missouri law. Mo. Rev. Stat. § 407.025 (2005). This Court has previously recognized that no such claim is possible for ADPs' under Missouri law, *WH*, 2:12-cv-102, Doc. 99 at 55, and should similarly dismiss the ADPs' Missouri consumer protection claim here.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Missouri unjust enrichment claim because Plaintiffs received the benefit of their bargain and because Defendants provided consideration for the benefit that Plaintiffs received. *See* Previous Motions to Dismiss.

Third, Missouri's statute of limitations bars Plaintiffs' Missouri consumer protection claim and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for consumer protection claims in Missouri is five years, and the limitation applies equally to unjust enrichment claims that are based on the same allegations. Mo. Rev. Stat. § 516.120; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Missouri requires that

Plaintiffs plead with particularity affirmative acts of concealment and due diligence. *Owen v. Gen. Motors Corp.*, 533 F.3d 913, 919-20 (8th Cir. 2008); *Batek v. Curators of the Univ. of Mo.*, 920 S.W.2d 895, 900 (Mo. 1996). Plaintiffs have not done so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to five years before Plaintiffs filed their original complaints.

P. Montana (No New Authority)

The Court should dismiss Plaintiffs' Montana claims.

First, ADPs' Montana consumer protection claim must be dismissed because ADPs are businesses that resold vehicles and did not purchase or lease goods primarily for personal, family, or household purposes, and are therefore not entitled to relief under Montana law. Mont Code §§ 30-14-133, 30-14-102. This Court has previously recognized that no such claim is possible for ADPs' under Montana law, *WH*, 2:12-cv-102, Doc. 99 at 56, and should similarly dismiss the ADPs' Montana consumer protection claim here.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Montana consumer protection claim because Montana's Consumer Protection Act expressly bars class claims. *See* Previous Motions to Dismiss.

Third, for the reasons explained in the Previous Motions to Dismiss, the Court also should dismiss Plaintiffs' Montana consumer protection claim because Plaintiffs fail to allege a specific nexus between Defendants' conduct and intrastate commerce. *Wiper Systems*, 2:13-cv-00902, Doc. 51 at 21-22; *AVRP*, 2:13-cv-00802, Doc. 57 at 22. Plaintiffs here fail to allege *any* offending conduct in Montana, and Plaintiffs' consumer protection claims should be dismissed accordingly.

Fourth, Montana's statute of limitations bars Plaintiffs' Montana consumer protection and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc.

60. The statute of limitations for consumer protection claims in Montana is two years, and the limitation applies equally to unjust enrichment claims that are based on the same allegations. Mont. Code Ann. § 27-2-11; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Montana requires that Plaintiffs plead with particularity both affirmative acts and due diligence. Mont. Code Ann. § 27-2-102(3); *Yarbro, Ltd. v. Missoula Fed. Credit Union*, 50 P.3d 158, 163 (Mont. 2002); *Holman v. Hansen*, 773 P.2d 1200, 1203 (Mont. 1989); *Rucinsky v. Hentchel*, 881 P.2d 616, 618 (Mont. 1994). Plaintiffs have not pled either. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to two years before Plaintiffs filed their original complaints.

Q. Nebraska (No New Authority)

The Court should dismiss Plaintiffs' Nebraska claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Nebraska antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard, and because Nebraska's antitrust statute does not apply retroactively. *See* Previous Motions to Dismiss.

Second, the Court should dismiss Plaintiffs' Nebraska unjust enrichment claim because, as explained in the Previous Motions to Dismiss, Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Nebraska's statute of limitations bars Plaintiffs' Nebraska antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Nebraska is four years, and the limitation applies equally to unjust enrichment claims based on the same allegations. Neb. Rev. Stat. § 59-1612; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Nebraska requires that Plaintiffs plead with particularity "some affirmative act of fraudulent concealment which prevent[ed] the [Plaintiffs] from discovering [their] cause of action" and that "they exercised due diligence to discover [their] cause of action before the statute of limitations expired." *Upah v. Ancona Bros. Co.*, 521 N.W.2d 895, 902 (Neb. 1994). Plaintiffs have not alleged either. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

R. Nevada (No New Authority)

The Court should dismiss Plaintiffs' Nevada claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Nevada antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Nevada unjust enrichment claim because Plaintiffs fail to allege a sufficient impact on intrastate commerce, and because Plaintiffs received consideration for the benefit conferred. *See* Previous Motions to Dismiss.

Third, Nevada's statute of limitations bars Plaintiffs' Nevada antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Nevada is four years, and the same limitation applies to unjust enrichment claims based on the same allegations. Nev. Rev. Stat. § 598A.220; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Nevada requires that Plaintiffs plead with particularity affirmative concealment and reasonable diligence. *Winn v. Sunrise Hosp. & Med. Ctr.*, 277 P.3d 458, 466 (Nev. 2012). Plaintiffs have not done so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

S. New Hampshire (No New Authority)

The Court should dismiss Plaintiffs' New Hampshire claims.

First, the Court should dismiss or limit Plaintiffs' New Hampshire antitrust claims to the extent the claims are based on conduct that allegedly occurred prior to the enactment of New Hampshire's indirect purchaser statute in January 1, 2008. This Court has previously limited plaintiffs' claims in New Hampshire on this basis. *See Wiper Systems*, 2:13-cv-00902, Doc. 74; *AVRP*, 2:13-cv-00802, Doc. 74; *Bearings*, 2:12-cv-00502, Doc. 104; *OSS*, 2:12-cv-00602, Doc. 75; *HCP*, 12-cv-00402, Doc. 130; *Fuel Senders*, 2:12-cv-00302, Doc. 104; *IPC*, 2:12-cv-00202, Doc. 82; *WH*, 2:12-md-02311, Doc. 99; s*ee also In re Silk*, 937 A.2d 900, 904 (N.H. 2007). The Court should do so here too.

The Court also should dismiss Plaintiffs' New Hampshire antitrust claims because, as explained in the Previous Motions to Dismiss, Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' New Hampshire unjust enrichment claim because Plaintiffs received the benefit of their bargain and received consideration for the benefit conferred. *See* Previous Motions to Dismiss.

Third, New Hampshire's statute of limitations bars Plaintiffs' New Hampshire antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in New Hampshire is four years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. N.H. Rev. Stat. Ann. § 356:12; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, New Hampshire requires that Plaintiffs plead with particularity affirmative concealment that "actively misled" them of their alleged cause action, as well as due diligence. *Portsmouth Country Club v. Town of Greenland*, 883 A.2d 298, 304-05 (N.H. 2005); *Lamprey v. Britton Constr., Inc.*, 37 A.3d 359, 367 (N.H. 2012). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

T. **New Mexico** (No New Authority)

The Court should dismiss Plaintiffs' New Mexico claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' New Mexico antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' New Mexico consumer protection claims because price-fixing claims cloaked as consumer protection claims are not actionable in New Mexico. *See* Previous Motions to

Dismiss. And, even if the claims were actionable, Plaintiffs fail to plead that Defendants engaged in "unconscionable" conduct, as required by New Mexico's consumer protection law. *See* Previous Motions to Dismiss.

Third, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' New Mexico unjust enrichment claim because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Fourth, New Mexico's statute of limitations bars Plaintiffs' New Mexico antitrust, consumer protection, and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust and consumer protection claims in New Mexico is four years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. N.M. Stat. Ann. § 57-1-12; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, New Mexico requires that Plaintiffs plead with particularity that they "exercised due diligence and that some affirmative act of fraudulent concealment frustrated discovery notwithstanding such diligence." *Cont'l Potash, Inc. v. Freeport-McMoran, Inc.*, 858 P.2d 66, 74 (N.M. 1993). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

U. New York (No New Authority)

The Court should dismiss Plaintiffs' New York claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' New York antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard, and because Plaintiffs do not allege sufficient impact on intrastate commerce. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' New York consumer protection claims because Plaintiffs (i) are too remote to have standing; (ii) do not allege any misrepresentations directed at them; and (iii) do not allege a specific nexus between Defendants' alleged conduct and intrastate commerce. *See* Previous Motions to Dismiss.

Third, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' New York unjust enrichment claim because New York does not allow the purchaser of a complex product that contains many parts to claim unjust enrichment against a manufacturer of one of the parts, and because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Fourth, New York's statute of limitations bars Plaintiffs' New York antitrust, consumer protection, and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for consumer protection and antitrust claims in New York is three and four years, respectively, and these limitations also apply to unjust enrichment claims asserted based on the same allegations. N.Y. Gen. Bus. Law § 340(5); N.Y. C.P.L.R. 214(2); *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, New York requires that Plaintiffs plead with particularity affirmative acts of concealment, reasonable reliance, and due diligence. *Pahlad v. Brustman*, 33 A.D.3d 518, 519-20 20 (2006); *Zoe G. v. Frederick F. G.*, 208 A.D.2d 675, 675 (1994). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' consumer protection and unjust enrichment claims for damages based on purchases prior to three years before Plaintiffs filed their original complaints, and Plaintiffs' antitrust claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints

V. North Carolina (No New Authority)

The Court should dismiss Plaintiffs' North Carolina claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' North Carolina antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard, and because Plaintiffs do not allege sufficient impact on intrastate commerce. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' North Carolina consumer protection claims because Plaintiffs do not allege a specific nexus between Defendants' alleged conduct and intrastate commerce. *See* Previous Motions to Dismiss.

Third, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' North Carolina unjust enrichment claim because Plaintiffs do not allege they conferred a direct benefit on Defendants and because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Fourth, North Carolina's statute of limitations bars Plaintiffs' North Carolina antitrust, consumer protection, and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for consumer protection and antitrust claims in North Carolina is four years, and that limitation also applies to unjust enrichment claims asserted based on the same allegations. N.C. Gen. Stat. § 75-16.2; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, North Carolina requires that Plaintiffs plead with particularity affirmative acts of concealment, reasonable and detrimental reliance, and due diligence. *Yancey v. Remington Arms Co.*, Nos. 1:12-cv-477 et al., 2013 WL 5462205, at *5 (M.D.N.C. Sept. 30, 2013); *Wilkerson v. Christian*, No. 1:06-cv-00871, 2008 WL 483445, at *12 (M.D.N.C. Feb. 19, 2008); *Crawford v. Paul Davis Restoration-Triad Inc.*, No. COA02-1040, 2003 WL 21436156, at *4 (N.C. Ct. App. June 17, 2003); *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 317 S.E.2d 41, 44 (N.C. Ct. App. 1984). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

W. **North Dakota** (No New Authority)

The Court should dismiss Plaintiffs' North Dakota claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' North Dakota antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' North Dakota unjust enrichment claim because Plaintiffs fail to plead they conferred a direct benefit on Defendants and because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, North Dakota's statute of limitations bars Plaintiffs' North Dakota antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in North Dakota is four years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. N.D. Cent. Code § 51-08.1-10(1); *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, North Dakota requires that Plaintiffs plead with particularity "some affirmative act or representation designed to prevent, and which does, in fact, prevent discovery of the cause of action," and the use of "reasonable diligence." *Roether v. Nat'l Union Fire Ins. Co.*, 200 N.W. 818, 822-23 (N.D. 1924). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

X. **Oregon** (No New Authority)

The Court should dismiss Plaintiffs' Oregon claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss or limit Plaintiffs' Oregon antitrust claims to the extent the claims are based on conduct that allegedly occurred prior to the enactment of Oregon's indirect purchaser statute on January 1, 2010. *Wiper Systems*, 2:13-cv-00902, Doc. 51 at 31; *AVRP*, 2:13-cv-00802, Doc. 57 at 31-32. This Court has previously limited plaintiffs' damages in New Hampshire and Utah on this basis, and should do so for the same reasons here. *See HCP*, 12-cv-00402, Doc. 130; *Fuel Senders*, 2:12-cv-00302, Doc. 104; *IPC*, 2:12-cv-00202, Doc. 82; *WH*, 2:12-md-02311, Doc. 99.

The Court also should dismiss Plaintiffs' Oregon antitrust claims because, for the reasons explained in the Previous Motions to Dismiss, Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Oregon unjust enrichment claim because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Oregon's statute of limitations bars Plaintiffs' Oregon antitrust claims and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Oregon is four years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. Or. Rev. Stat. § 646.140; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Oregon requires that Plaintiffs plead with particularity affirmative acts of concealment and due diligence. *Chaney v. Fields Chevrolet Co.*, 503 P.2d 1239, 1241 (Or. 1972); *Kante v. Nike, Inc.*, No. CV 07-1407-HU, 2008 WL 5246090, at *5 (D. Or. Dec. 16, 2008), *aff'd*, 364 F. App'x 388 (9th Cir. 2010). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

Y. **Rhode Island** (No New Authority)

The Court should dismiss Plaintiffs' Rhode Island claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Rhode Island consumer protection claim because Plaintiffs, as indirect purchasers, lack standing and because price-fixing claims cloaked as consumer protection claims are not actionable in Rhode Island. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Rhode Island unjust enrichment claims because Plaintiffs do not plead that they conferred a direct benefit on Defendants and because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, Rhode Island's statute of limitations bars Plaintiffs' Rhode Island consumer protection and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for consumer protection claims in Rhode Island is four years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. R.I. Gen. Laws § 6-36-23; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Rhode Island requires that Plaintiffs plead with particularity affirmative acts of concealment, reasonable reliance, and due diligence. *Ryan v. Roman Catholic Bishop*, 941 A.2d 174, 182-83 (R.I. 2008); *Martin v. Howard*, 784 A.2d 291, 302 (R.I. 2001). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

Z. South Carolina (No New Authority)

The Court should dismiss Plaintiffs' South Carolina claims.

First, the Court should dismiss Plaintiffs' South Carolina consumer protection claims because, as this Court previously held, South Carolina's Consumer Protection Act expressly bars class claims by indirect purchasers. *Wiper Systems*, 2:13-cv-00902, Doc. 74; *AVRP*, 2:13-cv-00802, Doc. 74; *Bearings*, 2:12-cv-00502, Doc. 104; *OSS*, 2:12-cv-00602, Doc. 75; *HCP*, 12-cv-00402, Doc. 130; *Fuel Senders*, 2:12-cv-00302, Doc. 104; *IPC*, 2:12-cv-00202, Doc. 82. The

Act provides that "[a]ny person who suffers any ascertainable loss of money or property . . . as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but *not in a representative capacity*, to recover actual damages." S.C. Code Ann. § 39-5-140(a) (emphasis added). As in the prior cases, Plaintiffs in this putative class action are indisputably indirect purchasers. This Court should thus dismiss Plaintiffs' South Carolina consumer protection claims.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' South Carolina unjust enrichment claim because Plaintiffs fail to plead that Defendants owed them a duty or that they conferred a direct benefit on Defendants, and because Plaintiffs received the benefit of their bargain. *See* Previous Motions to Dismiss.

Third, South Carolina's statute of limitations bars Plaintiffs' South Carolina consumer protection and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for consumer protection claims in South Carolina is three years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. S.C. Code Ann. § 39-5-150; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, South Carolina requires that Plaintiffs plead with particularity deliberate acts of deception and reasonable diligence. *Strong v. Univ. of S.C. Sch. of Med.*, 447 S.E.2d 850, 852 (S.C. 1994). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to three years before Plaintiffs filed their original complaints.

AA. South Dakota (No New Authority)

The Court should dismiss Plaintiffs' South Dakota claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' South Dakota antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard, and because Plaintiffs do not allege a sufficient impact on intrastate commerce. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' South Dakota unjust enrichment claim because Plaintiffs received consideration for the benefit conferred. *See* Previous Motions to Dismiss.

Third, South Dakota's statute of limitations bars Plaintiffs' South Dakota antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in South Dakota is four years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. S.D. Codified Laws § 37-1-14.4; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, South Dakota requires that Plaintiffs plead with particularity an affirmative act designed to prevent, and which does prevent, discovery of the cause of action, and due diligence. *Hinkle v. Hargens*, 81 N.W.2d 888, 891 (S.D. 1957); *Strassburg v. Citizens State Bank*, 581 N.W.2d 510, 515 (S.D. 1998). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

BB. Tennessee (No New Authority)

The Court should dismiss Plaintiffs' Tennessee claims.

First, the Court should dismiss Plaintiffs' Tennessee antitrust claims because Plaintiffs do not allege sufficient impact on intrastate commerce. This Court has recognized that to state a claim under Tennessee's antitrust law, Plaintiffs must allege "substantial effects" in Tennessee. *WH*, 2:12-md-02311, Doc. 99. In *WH*, the Court found that Plaintiffs' allegations were sufficient because "in-state Plaintiffs allege they purchased vehicles containing price-fixed products *in Tennessee*." *Id.* (emphasis added). Plaintiffs allegations here fail to meet that requirement. No Plaintiff alleges to have purchased the alleged products in Tennessee. EPP Compl. ¶ 73.

Alternatively, the Court should dismiss Plaintiffs' Tennessee antitrust claims because, as the defendants explained in their motions to dismiss in the Prior Auto Parts Cases, Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, the Court should dismiss Plaintiffs' Tennessee unjust enrichment claim because, as explained in the Previous Motions to Dismiss, Plaintiffs received consideration for the benefit conferred, which precludes an unjust enrichment claim in Tennessee. *See* Previous Motions to Dismiss.

The Court also should dismiss Plaintiffs' Tennessee unjust enrichment claim because, for the reasons explained in the Previous Motions to Dismiss, Plaintiffs do not allege that they had privity of contract with Defendants or, if they did have privity, that they exhausted their remedies against Defendants, or that exhaustion would be futile. *See* Previous Motions to Dismiss.

Third, Tennessee's statute of limitations bars Plaintiffs' Tennessee antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Tennessee is three years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. Tenn. Code Ann. § 28-3-105; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Tennessee requires that Plaintiffs plead with particularity an "affirmative action on the part of the defendant [that is] something more than mere silence or a mere failure to disclose the known facts", and "reasonable care and diligence." *Shadrick v. Coker*, 963 S.W.2d 726, 735 (Tenn. 1998) (quotation and citation omitted). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to three years before Plaintiffs filed their original complaints.

CC. Utah (No New Authority)

The Court should dismiss Plaintiffs' Utah claims.

First, the Court should dismiss or limit Plaintiffs' Utah antitrust claims to the extent the claims are based on conduct that allegedly occurred prior to the enactment of Utah's indirect purchaser statute on May 1, 2006. This Court previously limited plaintiffs' damages in Utah on this basis, and should do so for the same reasons here. *See Wiper Systems*, 2:13-cv-00902, Doc. 74; *AVRP*, 2:13-cv-00802, Doc. 74; *Bearings*, 2:12-cv-00502, Doc. 104; *OSS*, 2:12-cv-00602, Doc. 75; *HCP*, 12-cv-00402, Doc. 130; *Fuel Senders*, 2:12-cv-00302, Doc. 104; *IPC*, 2:12-cv-00202, Doc. 82; *WH*, 2:12-md-02311, Doc. 99. Utah enacted its statute allowing indirect purchasers to recover damages on May 1, 2006, Utah Code Ann. § 76-10-3109, and the statute may not be applied retroactively. *See* Utah Code Ann. § 68-3-3 ("A provision of the Utah Code is not retroactive, unless the provision is expressly declared to be retroactive."); *Brown & Root Indus. Serv. v. Indus. Comm'n*, 947 P.2d 671, 675 (Utah 1997) ("The general rule is that statutes are not applied retroactively unless retroactive application is expressly provided for by the legislature."); *California v. Infineon Techs. AG*, No. C 06-4333 PJH, 2008 WL 1766775, at *4-5 (N.D. Cal. Apr. 15, 2008) (concluding "that indirect purchaser standing was not available" prior to the amendment to the Utah Antitrust Act that allowed for indirect purchaser claims).

The Court also should dismiss Plaintiffs' Utah antitrust claims because, for the reasons explained in the Previous Motions to Dismiss, Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, the Court should dismiss Plaintiffs' Utah unjust enrichment claim because, as explained in the Previous Motions to Dismiss, Utah does not permit claims for unjust enrichment where, as here, plaintiffs have an adequate remedy at law. *See* Previous Motions to Dismiss. Utah courts have explicitly applied this rule to bar unjust enrichment claims where there is a contract addressing the transaction at issue, even when the contract is not between the parties to the litigation. *Id*. Because Plaintiffs do not allege the absence of an adequate legal remedy nor the absence of a contract governing their alleged purchases of vehicles containing shock absorbers, which certainly exist, Plaintiffs' Utah unjust enrichment claim must be dismissed.

Alternatively, the Court should dismiss Plaintiffs' Utah unjust enrichment claim because, as the defendants explained in their motions to dismiss in the Prior Auto Parts Cases, Plaintiffs fail to plead that they conferred a direct benefit on Defendants. *See* Previous Motions to Dismiss.

Third, Utah's statute of limitations bars Plaintiffs' Utah antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Utah is four years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. Utah Code Ann. § 7610-925; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Utah requires that Plaintiffs plead with particularity affirmative acts of concealment and due diligence. *Russell/Packard Dev., Inc. v. Carson*, 78 P.3d 616, 621 (Utah Ct. App. 2003), *aff'd*, 108 P.3d 741 (Utah 2005); *Colosimo v. Roman Catholic Bishop*, 156 P.3d 806, 817 (Utah 2007); *Berenda v. Langford*, 914 P.2d 45, 51–52 (Utah 1996). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to six years before Plaintiffs filed their original complaints.

DD. Vermont (New Authority)

The Court should dismiss Plaintiffs' Vermont claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Vermont antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Vermont consumer protection claims because Plaintiffs are too remote to have standing. *See* Previous Motions to Dismiss.

Third, the Court should dismiss ADPs' Vermont consumer protection claims because ADPs are not consumers under the Vermont Consumer Fraud Act. As this Court has recently recognized, "a business that purchases goods for resale is not protected" under the VCFA. *WH (TEDs)*, 2:14-cv-14451, Doc. 94 at 18 (citing *New England Surfaces v. E.I. Du Pont De Nemours & Co.*, 460 F. Supp. 2d 153, 162 (D. Me. 2006), *aff'd*, 546 F.3d 1 (1st Cir. 2008), *decision clarified on denial of reh'g*, 546 F.3d 11 (1st Cir. 2008)); *see also* Vt. Stat. Ann. Tit. 9, § 2451a.

(2006). The Court should similarly dismiss ADP's Vermont consumer protection claim here because the VCAFA does not apply to ADPs purchases of vehicles for resale.

Fourth, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Vermont unjust enrichment claim because Plaintiffs received consideration for the benefit conferred. *See* Previous Motions to Dismiss.

Fifth, Vermont's statute of limitations bars Plaintiffs' Vermont antitrust, consumer protection, and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust and consumer protection claims in Vermont is six years, and the limitation also applies to unjust enrichment claims relying on the same allegations. Vt. Stat. Ann. tit. 12, § 511; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. *See* ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Vermont requires that Plaintiffs plead with particularity an act of concealment with "an affirmative character designed to prevent, and which does prevent, the discovery of the cause of action", and the "exercise of ordinary diligence." *Watts v. Mulliken's Estate*, 115 A. 150, 152 (Vt. 1921); *Rodrigue v. VALCO Enters., Inc.*, 726 A.2d 61, 64 (Vt. 1999). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to six years before Plaintiffs filed their original complaints.

EE. West Virginia (No New Authority)

The Court should dismiss Plaintiffs' West Virginia claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' West Virginia antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard, and because Plaintiffs do not allege a sufficient impact on intrastate commerce. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' West Virginia unjust enrichment claim because Plaintiffs fail to allege not only that Defendants' retention of some benefit is "inequitable and unconscionable" but also "how", as required in West Virginia. *See* Previous Motions to Dismiss.

Third, West Virginia's statute of limitations bars Plaintiffs' West Virginia antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in West Virginia is four years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. W. Va. Code Ann. § 47-18-11; *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, West Virginia requires that Plaintiffs plead with particularity "obstruction by the defendant . . . by a positive act" or due diligence. *Sattler v. Bailey*, 400 S.E.2d 220, 228-29 (W. Va. 1990). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to four years before Plaintiffs filed their original complaints.

FF. **Wisconsin** (No New Authority)

The Court should dismiss Plaintiffs' Wisconsin claims.

First, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Wisconsin antitrust claims because Plaintiffs do not have antitrust standing under *AGC* or any other remoteness standard, and because Plaintiffs do not allege a sufficient impact on intrastate commerce. *See* Previous Motions to Dismiss.

Second, for the reasons explained in the Previous Motions to Dismiss, the Court should dismiss Plaintiffs' Wisconsin unjust enrichment claim because Plaintiffs received consideration for the benefit conferred. *See* Previous Motions to Dismiss.

Third, Wisconsin's statute of limitations bars Plaintiffs' Wisconsin antitrust and unjust enrichment claims. *See Bearings*, 2:12-cv-00502, Doc. 82; *OSS*, 2:12-cv-00602, Doc. 60. The statute of limitations for antitrust claims in Wisconsin is six years, and the limitation also applies to unjust enrichment claims asserted based on the same allegations. Wisc. Stat. § 133.18(2); *Stuart & Sons*, 456 F. Supp. 2d at 343.

Plaintiffs' conclusory allegation that defendants fraudulently concealed their alleged conduct is not sufficient to toll the statute of limitations. ADP Compl. ¶¶ 154-62; EPP Compl. ¶¶ 174-82. To toll the statute of limitations for fraudulent concealment, Wisconsin requires that Plaintiffs plead with particularity affirmative conduct, detrimental reliance, and due diligence. *State ex rel. Susedik v. Knutson*, 191 N.W.2d 23, 25-26 (Wis. 1971); *Hinkson v. Sauthoff*, 74 N.W.2d 620, 622 (Wis. 1956). Plaintiffs fail to do so. Thus, the Court should apply the statute of limitations and dismiss Plaintiffs' claims for damages based on purchases prior to six years before Plaintiffs filed their original complaints.

IV. ALTERNATIVELY, THE COURT SHOULD DISMISS PLAINTIFFS' UNJUST ENRICHMENT CLAIMS BECAUSE THEY CANNOT USE UNJUST ENRICHMENT TO RECOVER ON FAILED ANTITRUST AND CONSUMER PROTECTION THEORIES

The Court also should dismiss Plaintiffs' unjust enrichment claims under the laws of any states for which the Court dismisses Plaintiffs' statutory antitrust and consumer protection claims. As explained in Previous Motions to Dismiss, this parallel outcome is required because Plaintiffs cannot use parasitic unjust enrichment claims to recover on failed statutory antitrust and consumer protection claims. *See Previous Motions to Dismiss*. Moreover, even if the Court construes Plaintiffs' unjust enrichment claims to be autonomous, "free-standing," unjust enrichment claims, the Court must nonetheless dismiss those claims because there is no cause of action for unjust enrichment separate and apart from the predicate statutory causes of action. *See id.* Accordingly, the Court should dismiss Plaintiffs' unjust enrichment claims to the same extent the Court dismisses Plaintiffs' statutory antitrust and consumer protection claims.

CONCLUSION

For the reasons stated above, Defendants respectfully requests the Court dismiss ADPs' and EPPs' Class Action Complaints in their entirety pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Dated: September 9, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2016, I caused a true and correct copy of the foregoing DEFENDANTS' COLLECTIVE MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS and BRIEF IN SUPPORT THEREOF to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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